



FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35496]

Denver & Rio Grande Railway Historical Foundation d/b/a Denver & Rio Grande Railroad, L.L.C.—Petition for Declaratory Order

AGENCY: Surface Transportation Board.

ACTION: Institution of declaratory order proceeding.

SUMMARY: In response to a petition filed by the Denver & Rio Grande Railway Historical Foundation, Inc. (DRGHF) on July 12, 2011, the Board is instituting a declaratory order proceeding under 49 U.S.C. 721 and 5 U.S.C. 554(e). DRGHF requests that the Board issue an order declaring that municipal zoning law is preempted with respect to DRGHF's activities on a parcel of land leased by DRGHF in Monte Vista, Colo.

DATES: DRGHF's opening evidence is due by March 26, 2012. Replies are due by April 26, 2012. DRGHF's rebuttal is due by May 11, 2012.

ADDRESSES: Any filing submitted in this proceeding must be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's website, at <http://www.stb.dot.gov>. Any person submitting a filing in the traditional paper format should send an original and 10 copies (and also an electronic version), referring to Docket No. FD 35496, to: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, 1 copy of each filing in this

proceeding must be sent to each of the following: (1) Donald H. Shank, Denver & Rio Grande Railway Historical Foundation, 20 North Broadway Street, Monte Vista, CO 81144-2401; (2) Eugene L. Farish, City Attorney, P.O. Box 430, Monte Vista, CO 81144 (representing the City of Monte Vista); and (3) John D. Heffner, Strasburger & Price, 1700 K Street, N.W., Suite 640, Washington, DC 20006 (representing the San Luis & Rio Grande Railroad).

FOR FURTHER INFORMATION CONTACT: Julia Farr, (202) 245-0359.

[Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: 1-800-877-8339].

Copies of written comments will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's website.

SUPPLEMENTAL INFORMATION: DRGHF's petition requests an order declaring that its activities on a parcel of land in Monte Vista, Colo. fall under the Board's jurisdiction, preempting municipal zoning regulation of those activities. DRGHF states that it uses this parcel as a railcar rehabilitation and restoration facility. This petition raises questions regarding the Board's jurisdiction under 49 U.S.C. 10501(a) and preemption under 49 U.S.C. 10501(b).

Under 5 U.S.C. 554(e), the Board has discretionary authority to issue a declaratory order to terminate a controversy or remove uncertainty. The issues raised by DRGHF merit further consideration, and a declaratory order proceeding is thus instituted here. For further information, please see the Board's decision served on February 23, 2012 in Docket No. FD 35496.

Board decisions and notices are available on our website at
“WWW.STB.DOT.GOV.”

Decided: February 22, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig

Clearance Clerk

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